

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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FREEPLAY MUSIC LLC,)
)
 Plaintiff,) 09-cv-9753 (VM)
)
 - v -)
)
 M-1 GLOBAL, M-1GLOBAL.COM, M-1 AMERICA,)
 AFFLICTION ENTERTAINMENT GROUP, LLC, and)
 AFFLICTION, INC.,)
)
 Defendants.) X

ANSWER TO
COMPLAINT

Defendants AFFLICTION ENTERTAINMENT GROUP, LLC and AFFLICTION INC. ("Affliction") by their attorneys, LEWIS BRISBOIS BISGAARD & SMITH LLP, as and for its answer to the complaint of plaintiff FREEPLAY MUSIC, L.L.C. ("Plaintiff"), in the above captioned action, allege upon information and belief as follows:

NATURE OF ACTION

1. Neither admit nor deny the allegations contained in paragraph "1" of the Complaint, as such constitute a legal conclusion to which no response is required, except, to the extent a response is, in fact, required, deny the allegations and respectfully refers all questions of law to the Court for its consideration.

JURISDICTION AND VENUE

2. Neither admit nor deny the allegations contained in paragraph "2" of the Complaint, as such constitute a legal conclusion to which no response is required, except, to the extent a response is, in fact, required, deny the allegations and respectfully refers all questions of law to the Court for its consideration.

3. Neither admit nor deny the allegations contained in paragraph "3" of the Complaint with regard to jurisdiction, as such constitute a legal conclusion to which no response is required, except, to the extent a response is, in fact, required, states that Affliction does not maintain an office in New York but conducts a small amount of business in New York, and denies the remaining allegations and respectfully refers all questions of law to the Court for its consideration.

4. Neither admit nor deny the allegations contained in paragraph "4" of the Complaint, as such constitute a legal conclusion to which no response is required, except, to the extent a response is, in fact, required, states that Affliction does not maintain an office in New York, but denies the allegations and respectfully refers all questions of law to the Court for its consideration.

THE PARTIES

5. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "5" of the Complaint.

6. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "6" of the Complaint.

7. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "7" of the Complaint.

8. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "8" of the Complaint.

9. Admit the allegations contained in paragraph "9" of the Complaint.

10. Admit the allegations contained in paragraph "10" of the Complaint.

ALLEGATIONS COMMON TO ALL COUNTS

11. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "11" of the Complaint.

12. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "12" of the Complaint.

13. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "13" of the Complaint except state that a Mixed Martial Arts Event was scheduled then cancelled.

The (alleged) Infringing Commercial

14. Deny the allegations contained in paragraph "14" of the Complaint except admits that M-1 retained the services of Affliction to create a commercial.

15. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "15" of the Complaint except acknowledge that a copy of a registration certificate is attached.

16. Deny the allegations contained in paragraph "16" of the Complaint.

17. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "17" of the Complaint.

18. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "18" of the Complaint.

19. Deny the allegations contained in paragraph "19" of the Complaint.

20. Deny the allegations contained in paragraph "20" of the Complaint.

CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Federal Copyright Infringement)

21. Defendants repeat and incorporate their responses to paragraphs "1" through "20" of the Complaint.

22. Deny the allegations contained in paragraph "22" of the Complaint.

AFFIRMATIVE DEFENSES

Affliction sets forth the following affirmative defenses to the claims made in the Complaint. In doing so, Affliction does not assume the burden of proof with respect to any of the affirmative defenses where the substantive law provides otherwise.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff does not own the copyright in the underlying works upon which were based those claims asserted by it against Affliction in this civil action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The Plaintiff's Sound Recordings as defined in the Complaint lack sufficient authorship and/or creativity to support the copyrights, and any copyright registrations, asserted by it against Affliction.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

To the extent, if any, that any distribution or sale by Affliction violated or infringed upon any copyright owned by Plaintiff, such violation or infringement was innocent and without knowledge of the rights allegedly owned by Plaintiff.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

The Complaint fails to state a sufficient copyright infringement claim upon which relief may be granted.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Plaintiff has not suffered any damages as a result of the acts alleged to have been committed.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by unclean hands.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

To the extent, if any, Plaintiff holds a valid copyright, said copyright is not infringed.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

Defendants are informed and believe and thereon allege that Plaintiff's conduct concerning the matters alleged in the Complaint constitutes carelessness, negligence, misconduct and/or bad faith, or Plaintiff was otherwise at fault, and the resulting injuries, if any, sustained by Plaintiff, were proximately caused and contributed to, in whole or in part, by the conduct of Plaintiff and/or other third parties, thus barring or limiting Plaintiff's right of recovery against Affliction.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by laches.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by waiver.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by estoppel.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, because Plaintiff's have failed to mitigate damages.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

The Complaint fails because Affliction has conducted itself at all times in good faith, with a reasonable belief that its actions did not constitute a violation or infringement of any other person or entity's rights.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred as the copyright registration filed by Plaintiff should not have been granted.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by fair use.

To the extent Affliction may have other separate and/or additional defenses of which it is not aware, Affliction reserves the right to assert them by amendment to this Answer as discovery continues.

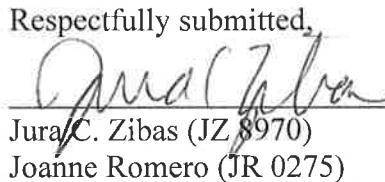
WHEREFORE, Affliction respectfully requests that the Complaint asserted against Affliction be dismissed in its entirety and all relief requested therein be denied, and that the Court award Affliction such further relief as the Court deems just and proper.

JURY DEMAND

Affliction demands a trial by jury of all causes of action as to which the law entitles them to a trial by jury.

Dated: New York, New York
January 18, 2010

Respectfully submitted,


Jura C. Zibas (JZ 8970)

Joanne Romero (JR 0275)

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TO:
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Attorney for Plaintiff

CERTIFICATION OF SERVICE

I hereby certify that on January 18, 2010, a true copy of the DEFENDANTS' AFFLICTION ENTERTAINMENT GROUP LLC and AFFLICTION INC. Answer and Rule 7.1 Statement, was served via ECF and sent via regular mail to Christopher Serbagi, Esq., 488 Madison Avenue, Suite 1120, New York, New York 10022, pursuant to the Federal Rules of Civil Procedure and local rules of the Southern District of New York.



JURA C. ZIBAS